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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,495	06/15/2000	ANDREW FRANCIS KIRBY	470044.403	6663

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 6300  
SEATTLE, WA 98104-7092

EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 06/02/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/529,495

Applicant(s)

KIRBY ET AL.

Examiner

Dr. Kelechi C. Egwim

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:                                          |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/5/03 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the originally filed specification for the new negative limitation wherein the alternating copolymer is not a copolymer of "maleic anhydride and isobutylene".

The test for determining compliance with the written description requirement set forth in the first paragraph of §112 regarding new matter is whether the disclosure of the application as originally filed reasonably conveys to an artisan that the inventor had possession at that time of the later claimed subject matter. In re Kaslow, 707 F.2d 1366, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

The mere absence of the mention of a species in a disclosure teaching the genus, which would be understood to include all species within said genus, is not, in and of itself, sufficient support for a new negative limitation excluding said species.

In this case, the claimed "alternating copolymer" encompasses maleic anhydride and isobutylene copolymer. Therefore, it is the perspective of the examiner that by adding the recitation wherein the alternating copolymer is not a copolymer of "maleic anhydride and isobutylene", the applicant has amended the claims to define a new intermediate class of specific "alternating copolymer" which is narrower than the class of "alternating copolymer" embraced by the unqualified term "alternating copolymer", broader than the group of "alternating copolymer" exemplified in the specification, but not disclosed in the specification as originally filed.

There is simply nothing in the original disclosure of this application that would have conveyed to an artisan that the appellants had possession on the application filing date of this new intermediate class of "alternating copolymer" excluding maleic anhydride and isobutylene copolymer. In re Kaslow, supra.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons cited in the previous action

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 58'), for reasons cited in previous Office actions.
8. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 02'), Nabeya et al. or Narayanan et al., for reasons cited in previous Office actions.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 1-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. for reasons cited in the previous action

***Response to Arguments***

11. Applicant's arguments filed 5/5/03 have been fully considered but they are not persuasive.

12. Regarding the 112 rejection, in all of applicant's arguments, nowhere has applicant pointed out where the relative term "finely divided" is defined in the originally filed specification to give it scope. The term is still a relative term and when used in a claim, it renders it indefinite how fine/course the principal must be to qualify as "finely divided". None of the literature submitted with applicant's arguments provide a universally acceptable definition for "finely divided" in the art.

13. Regarding the 102(b) over Kataoka et al. (JP 58'), firstly, the literature submitted by applicant merely states that, even though the copolymer of styrene/maleic anhydride is universally known to be alternating, when polymerized at temperatures above 90°C, the copolymer becomes "increasingly random". Contrary to applicant's assertions, this document does not teach the copolymer to be fully or definitively random, even at the temperature exemplified in Kataoka et al. The styrene/maleic anhydride copolymer need only be substantially alternation (i.e., predominantly alternating) to be considered alternating (see applicant's own claim 4).

Further, as stated above, there is no support in the originally filed specification for expressly excluding the isobutylene/maleic anhydride copolymer, which is also taught by Kataoka et al. (See ¶ 3 on page 5 of translation).

14. Regarding the solid character of the agrochemical principals in Narayanan et al., a "liquid" is not a low melting point solid. A low melting point solid is still solid at ambient temperature; this is well accepted. Narayanan et al. teaches the solid, be it one with a low melting point. Low melting point solids are not excluded from the solids in applicant's claims.

15. In response to applicant's arguments against Robinson, it does not matter if the water-soluble polymers are termed as dispersants or drift reducing additives, they would essentially serve the same purpose once combined. Dispersants also "enhance the formation of large, stable droplets" as recited in applicant's arguments with regard to the additives. As stated in the previous action, the initial dispersion of the agrochemical and the copolymer in an organic solvent prior to combined dispersion in water is not excluded as a step in dispersing the two.

16. Further, in response to the argument that Robinson fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., levels of the copolymer) are not recited in the rejected claim(s). Although the claims are


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interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (703) 306-5701. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



KCE  
May 28, 2003